

CCN 20457



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

November 28, 2000

Reply To
Attn Of: ECL-113

Mr. Jerry L. Lyle, Assistant Manager
Environmental Management
U.S. Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

Ms. Katherine Kelly, Administrator
Waste Management and Remediation Division
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Response to Letter, Dated November 13, 2000 Concerning Statement of Dispute
Regarding SFE-20 Tank, from Kathleen Hain.

Dear Mr Lyle and Ms. Kelley:

I am writing this letter in response to a letter I received from Kathleen Hain, Director, Environmental Restoration Program, U.S. Department of Energy, Idaho Operations Office (DOE-ID), dated November 13, 2000, requesting that the Dispute Resolution Committee (DRC) be convened to resolve a dispute pursuant to the Idaho National Engineering and Environmental Laboratory (INEEL), Federal Facility Agreement and Consent Order (FFA/CO).

The essential question raised by Ms. Hain's letter is whether or not this matter is appropriately addressed under the dispute provisions of our FFA/CO. Ms. Hain provides a written statement of dispute in accordance with Section 9.2(a) and (d) of the FFA/CO. However, I hope to convince both of you that the matter Ms. Hain refers to is not a matter for the DRC. The FFA/CO was established to achieve compliance with remedial and corrective action requirements of state and federal laws. It neither addresses, nor serves as a shield against legal obligations outside this limited scope.

First, from a procedural perspective, Ms. Hain's letter refers to a letter from Brian Monson, Hazardous Waste Program Manager, Idaho Department of Environmental Quality (IDEQ) to Don Rasch, DOE-ID, requesting that a closure plan be submitted pursuant to the Hazardous Waste Management Program as authorized under the

Resource Conservation and Recovery Act (collectively referred to as "RCRA/HWMA"), for the SFE-20 tank. The informal dispute mentioned in Kathleen's letter occurred between two individuals not associated with implementing the FFA/CO. It did not involve our project or Waste Area Group managers, under the FFA/CO.

Next, in the declaration section to the September 1999, Record of Decision (ROD) which includes the SFE-20 tank, it states, "The selected alternative for the SFE-20 Hot Waste Tank System is Removal, Treatment, and Disposal." At page 5-78 of the ROD, it states, "There are no data available for nonradioactive constituent; however, the tank contents may contain inorganic and organic constituents that were associated with the operation of the CPP-603 spent fuel storage pool filtration system." We are also aware of the statement at page 12-33 of the ROD, "The SFE-20 Hot Waste Tank System was previously closed and abandoned in 1976, and therefore, was not used as a RCRA tank storage unit." However, this statement is not a regulatory determination.

We do not see how the State's request for a closure plan interferes with our ability to implement the terms of the FFA/CO, as their request is based on their position that DOE-ID was managing a hazardous waste storage unit. Those closure requirements and tank system components outside the scope of the site as identified in the ROD, would be addressed under the RCRA/HWMA approved closure plan. If DOE-ID disputes the factual basis of the RCRA/HWMA program office's claim, they should discuss this with the authorized program office. Although we have tried to minimize overlap between programs, an operable unit or site under the FFA/CO may also be a TSDF under the RCRA/HWMA program. In such instances, both programs would apply.

As previously stated, the classification of the SFE-20 tank as a RCRA/HWMA storage tank is a regulatory matter whose disposition is outside the scope of the FFA/CO. If DOE-ID elects to contest the facts used by the state to make its finding that the SFE-20 is a RCRA/HWMA storage tank, it should resolve the matter with the Idaho Hazardous Waste Program Office. This matter, as mentioned above, is not subject to dispute resolution under the authority of the FFA/CO.

A final concern, is that this matter was not discussed between the project managers prior to elevation to the DRC. This important provision in our FFA/CO exists to minimize elevating easily resolvable matters. It has served the Agencies well since 1991, and we question why DOE-ID has elected to abandon this opportunity concerning this matter.

Please have Kathleen contact Wayne Pierre of my staff at (206) 553-7261, if DOE-ID wishes to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gearheard", with a large, stylized flourish at the end.

Michael F. Gearheard, Director
Office of Environmental Cleanup

cc: Dean Nygard, IDEQ
Kathleen Hain, DOE-ID
Wayne Pierre, EPA-10
Dave Bartus, EPA-10
Rick Albright, EPA-10
Brian Monson, IDEQ